

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, November 4, 2011
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto, Chair	Honorable Charles V. Harrington
Honorable Eddward Ballinger	Honorable Carey S. Hyatt
Honorable Michael J. Burke	Honorable Kenneth Lee
Honorable James Conlogue	Honorable Joseph J. Lodge
Honorable David Cunanan	Honorable David Mackey – <i>telephonically</i>
Honorable Robert Duber II	Honorable Colleen McNally
Honorable Richard Gordon	Mr. Marcus Reinkensmeyer – <i>by proxy</i>
Honorable Sue Hall – <i>telephonically</i>	Honorable Michala Ruechel – <i>telephonically</i>
Mr. Joshua Halversen – <i>telephonically</i>	Honorable Monica Stauffer – <i>telephonically</i>
Honorable Celé Hancock – <i>telephonically</i>	Honorable Randall Warner
Mr. Tim Hardy	

MEMBERS ABSENT:

William G. Klain, Esq.	Ms. Susan Wilson
Honorable Patricia Noland	

PRESENTERS/GUESTS:

Chief Justice Rebecca Berch	Mr. Jerry Landau, AOC
Mr. Stewart Bruner, AOC	Ms. Jennifer Liewer, AOC
Ms. Jennifer Greene, AOC	Mr. Mark Meltzer, AOC
Ms. Janet Johnson, AOC	Ms. Carol Mitchell, AOC
Mr. Paul Julien, AOC	Ms. Karen Westover, proxy for Mr. Reinkensmeyer

STAFF:

Ms. Kay Radwanski, AOC	Ms. Julie Graber, AOC
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 4, 2011, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:10 a.m.

Judge Soto welcomed members to what was his final meeting as chair of COSC. He introduced Chief Justice Rebecca Berch, who thanked him for his contributions and dedication over the last six years as committee chair and presented him with a certificate of appreciation. Judge Soto remarked how impressed he has been over the years by the members' dedication and hard work and attested to the high regard COSC recommendations do hold. Judge Soto also welcomed a new member, Judge Richard Gordon, from Pima County.

Judge Soto reviewed proposed meeting dates for 2012 that the Committee approved:

- February 3, 2012
- May 18, 2012
- September 7, 2012
- November 2, 2012

B. Approval of Minutes

The draft minutes from the September 9, 2011, meeting of the COSC were presented for approval.

MOTION: To approve the September 9, 2011, COSC meeting minutes as presented. Motion seconded. No further discussion. Approved unanimously. COSC-11-023

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update *(taken out of order)*

Mr. Jerry Landau, AOC director of government affairs, discussed proposed legislation that may impact the superior courts.

1. Mr. Landau first reported on decisions made at the last AJC meeting regarding legislative proposals previously presented to COSC.

a. Proposals moving forward.

2012-1, Criminal Code Corrections Bill: Annual clean-up bill without substantive changes.

2012-2, Probate Omnibus: Expands the judge's authority to protect vulnerable adults; clarifies when and how the conservator's annual accounting must be filed; permits the court to order fingerprints and background checks for proposed guardians and conservators. Mr. Landau commented that this proposal is still being drafted and concomitant rules are being considered.

A member asked who would pay for the fingerprinting checks. Mr. Landau believed it was the person who was being fingerprinted.

2012-3, Termination of Parental Rights: Clarifies a timing question in the statute so the clock starts *at the time the dependency petition was filed* for children who have

been in an out-of-home placement for six months or longer and were under the age of three.

2012-4, Homeless Court: Allows a county to establish a homeless court made up of different municipal courts and justice of the peace courts so a judge will have the ability to hear a case from another jurisdiction.

b. *Proposals not moving forward.*

- Grand jury electronic recording, from Maricopa County.
- Removal of the Board of Supervisors from salary decisions for court reporters and probation officers, from Pima County.
- Juvenile probation records, from Maricopa County; action was not taken because the goal can be achieved by rule change.

2. Mr. Landau presented legislative proposals that were deferred or submitted after the September COSC meeting and sought feedback and recommendations from the committee.

a. *Proposals from the Clerks of the Superior Court.*

Clerks' Proposal #1: Civil Arbitration Bonds: Requires a court order for disbursements of civil arbitration bonds after an arbitration case is appealed by filing a motion to obtain the deposit by appellant; a motion to order the deposit to pay costs and fees by appellee; or on the court's own motion. The intent of this proposal is to clean out records. Mr. Landau reported that AJC is planning to meet with the clerks to determine whether this proposal could move forward other than by legislation.

Ms. Hall stressed the importance of this proposal for the Clerks. While the Clerks are open to discussion, they will be moving the proposal forward whether by legislation or by rule change. Judge Duber recommended that the committee take no position if the Clerks intend to pursue legislative changes. Judge Harrington commented that arbitrations are subject to court rules, and any amendment to court rules should be done through a rule change petition and not by modifying the statutes.

MOTION: To recommend that AJC work with the Clerks to move forward with the proposal by rule change rather than by legislation, as presented. Motion seconded. No further discussion. Approved unanimously. COSC-11-024

Clerks' Proposal #2: Entry on records; wrongful arrest: Adds language restricting access to records that have a notation clearing an individual from a wrongful arrest and conviction. The intent of this proposal is to standardize court practices and catch up with technology. Mr. Landau sought feedback from COSC and reported that AJC postponed action on this proposal to determine whether the proposal is needed.

Mr. Halversen inquired whether the proposed language restricted specific types of access. Mr. Landau indicated that the language broadens the statute by adding the words “from providing access to.” Judge Duber questioned whether the proposal is needed or if it merely anticipates a problem that might not happen. Judge Conlogue pointed out that this is an existing statute and a rule change is inappropriate. Ms. Hall indicated that the Clerks want to move forward with the proposal but remain open to discussion on the best way to accomplish the proposal’s intent, which is to update a statute dating back to 1973 and get ahead of the curve with regard to technology. Ms. Hall added the courts already have the ability to do this without additional costs.

MOTION: To recommend that AJC support the Clerks’ proposal #2, as presented. Motion seconded. No further discussion. Approved unanimously. COSC-11-025

b. *Proposal from the Fraternal Order of Police.*

The proposal clarifies requirements for smaller jurisdictions to provide an alternate hearing officer by means of a contract with outside jurisdictions. AJC did not have an issue with this part. The proposal would also define disciplinary action as the dismissal, demotion or suspension *for any length of time*. Currently, appeals are guaranteed for law enforcement and probation officers if the disciplinary action is for more than eight hours, but they are not allowed if the action is for less than eight hours. The Committee on Probation (COP) was split on this proposal. AJC requested input from COSC.

Mr. Hardy, COP chair, shed some light on the controversy regarding whether the appeal process should cover all types of disciplinary actions. Some chiefs believed that appeals should not be allowed for those disciplinary actions less than eight hours because of the amount of work involved with investigations, disciplinary processes and appeals. Others argued that the proposal was unnecessary based on the relative infrequency of these types of disciplinary actions in their counties.

MOTION: To recommend that AJC take no position with regard to the proposal, as discussed. Motion seconded. No further discussion. Approved unanimously. COSC-11-026

c. *Proposals from the Arizona Prosecuting Attorney’s Advisory Council (APAAC).*

APAAC Proposal #1: Definition of Criminal Offenses: Defines criminal offense, for the purposes of victim rights, as a felony, misdemeanor, petty offense and violation of a local ordinance. An appellate case decision prompted this proposal from the County Attorneys’ Office.

A question was asked about the effect of the proposal on notice requirements for county attorneys. Mr. Landau indicated that notice requirements apply to all cases and that there would be no change for county attorneys. Several members expressed concern about possible consequences on justice courts, municipal courts, city

attorneys and county attorneys. Mr. Landau clarified that the impact would be on justice courts, municipal courts and city attorneys based on their responsibility for misdemeanors and for local ordinances that are criminal in nature.

MOTION: To recommend that AJC support APAAC Proposal #1: Definition of Criminal Offenses, with the understanding that the members did not consider or intend to impact limited jurisdiction courts, due to lack of information, as discussed. Motion seconded. Approved unanimously. COSC-11-027

APAAC Proposal #2: Minor Victim Identification Protection: Withdrawn by APAAC in order to proceed by rule change.

APAAC Proposal #3: Term of Grand Jury: Option 1 increases the maximum allowable term for a grand jury to 180 days in counties with a population under 200,000, except if a presiding judge extends the grand jury until an ongoing investigation is completed. In addition, the grand jury remains optional for these counties. Option 2 keeps the same exception but limits the timeframe for a grand jury to 120 days in counties over 200,000. APAAC is considering these two optional proposals after AJC took no position on the County Supervisors Association (CSA)'s proposal that would have increased the maximum allowable term for a grand jury to 180 days at the discretion of the presiding judge and across the state. The intent behind that proposal was to realize savings for counties.

Judges Burke and Mackey related their observations after attending the Presiding Judges meeting. According to Judge Burke, presiding judges had concerns over the length of an empanelment and its impact on members. Presiding judges also discussed the appropriateness of proceeding through legislation. Ms. Hall drew attention to the burden a six-month empanelment would place on many self-employed individuals in rural counties. Judge Burke agreed with Ms. Hall's comment.

MOTION: To recommend that AJC take no position regarding the proposal, as discussed. Motion seconded. No further discussion. Approved unanimously. COSC-11-028

3. Mr. Landau discussed upcoming legislation. He is anticipating a proposal regarding jail costs and jail capacity, which should be of interest to the counties. In addition, he is awaiting proposed legislation that would allow a judge under certain statutory criteria to release a person convicted and sentenced to the Department of Corrections (DOC) out of the DOC prior to the sentence completion if this person has secured an appearance bond. A new proposal from the Arizona Bail Bondsmen Association is expected. AJC considered seven proposals from the association that, for instance, would eliminate a judge's ability to impose a cash-only bond and would mandate a judge to set a minimum bond for a person who once failed to appear. AJC opposed

two of the proposals and took no position on the remaining five. Mr. Landau will meet with the sponsoring legislator about the agency's position.

B. Proposed Changes to Technical Standards Related to E-Filing *(taken out of order)*

Mr. Stewart Bruner, AOC, ITD strategic planning, reviewed background information and specific changes to ACJA §§ 1-501, 1-504 and 1-506 regarding proposed technical standards on e-filing, document imaging and handling of digital documents after changes to Rule 124 were not approved by the court. Proposed changes incorporate feedback and comments received from AJC, COSC and other stakeholders. No additional comments were received on the ACJA Web Forum. Mr. Bruner sought a recommendation from COSC that AJC approve the proposed changes to these technical standards.

Mr. Bruner reviewed specific changes in ACJA §§ 1-501, 1-504 and 1-506 that resulted from comments by COSC. In ACJA § 1-501, information technology plans are now submitted by the courts "at COT's discretion" rather than "annually" so rural counties are not impacted as much by the economy and fewer resources. In ACJA § 1-504, the definition of metadata was enhanced so metadata is now an inherent part of the documents, which is important for document management and retrieval. Criteria for purging documents before archival were specified in ACJA § 3-402 and apply only to superior courts. Disconnected scanning requirements were clarified so they apply to limited jurisdiction courts only. "Status Code" was changed to "event code" to accommodate for judgment renewals in limited jurisdiction courts. In ACJA § 1-506, "and related administrative orders" was added to Rule 124 in authority sections to accommodate for future situations. Hyperlink language was updated to match the latest Rule 124 description. Bookmark language was changed from "shall" to "may" at COT's discretion because the State Bar of Arizona argued that it would be too much work for attorneys and that some attorneys would be unable to fulfill the technical requirements. Date and time requirements for proof of filing were aligned with AZTurboCourt. The timetable for communication with the central document repository and AZTurboCourt was clarified so it is only prior to acceptance of any e-filings.

MOTION: To recommend that AJC approve the proposed changes to the technical standards in ACJA §§ 1-501, 1-504 and 1-506, as presented. Motion seconded. No further discussion. Approved unanimously. COSC-11-029

C. Justice Court Rules of Civil Procedure *(taken out of order)*

Mr. Paul Julien, AOC judicial education officer and chair of the Committee on Civil Rules of Procedure for Limited Jurisdiction Courts (RCiP), and Mr. Mark Meltzer, AOC policy analyst, updated members on the progress of the Justice Court Rules of Civil Procedure (JCRCP) draft. Mr. Julien reviewed background information about the committee and highlighted some of the JCRCP features and tools. Mr. Julien underscored the need for proper vetting of the JCRCP to educate and answer questions. Comments and feedback received during presentations to stakeholders, such as LJC, COSC, LJCAA, JP Association and justice courts in Maricopa, Cochise and Mohave counties were incorporated into this final product. LJC approved an earlier version of the JCRCP. The

committee will submit a written report to AJC in December and will request that AJC approve its recommendation to file a rule petition seeking to adopt the JCRCP.

The decision to draft a new set of rules emerged from a consensus among RCiP members that the rules could use restyling as well as substance and formality. Mr. Julien commended the committee's ability to reach general consensus on all but one issue given that the members represented many different stakeholders with competing interests (from judge, justice of the peace, clerk and court administrator to legal aid and debt collection attorneys). At issue was how much information should debt buyers have to produce. Debt collection attorneys felt targeted while debtors' attorneys argued that debt owners are not always known to debtors. Representatives from both sides will attempt to resolve this issue in a subcommittee meeting one last time.

A member questioned the impact of these rules on superior court operations. Mr. Julien responded that there would be fewer appeals to the superior court if the JCRCP were successful. Furthermore, he is anticipating the creation of a committee that will look at the rules of civil procedure statewide and attempt stylistic changes and simplification of the rules in a similar way as the rules of evidence. Judge Duber said that while he recognized that the JCRCP is a good product, he objected to another set of rules.

MOTION: To commend the Committee on the Rules of Civil Procedure for Limited Jurisdiction Courts for their efforts and hard work in putting together the JCRCP, as discussed. Motion seconded. No further discussion. Approved with one abstention. COSC-11-030

D. 2011 Rules Update *(taken out of order)*

Mr. Mark Meltzer, AOC policy analyst, presented items from the Supreme Court's September 2011 rules agenda that might be of interest to COSC. Mr. Meltzer provided a synopsis and background information regarding rule petitions the Supreme Court either rejected, adopted on a permanent basis or adopted effective 1/1/2012. He highlighted rule petition R-11-0013: Juvenile Court Rules, Rule 40.1, that was adopted effective 1/1/12. This new rule establishes specific duties and responsibilities for all attorneys and guardians ad litem who represent children in order to promote higher quality representation and to bar appointment of untrained or poorly trained representatives. He also drew attention to rule petition R-10-0035: Rules of Evidence, that was adopted effective 1/1/12. The Arizona Rules of Evidence were revamped in their entirety by restyling and making the rules more understandable; conforming some of the Arizona rules of evidence to the federal rules of evidence; and by maintaining distinct differences from the federal rules of evidence. These changes may or may not affect the admissibility of evidence.

A member asked if R-11-0013 would apply only to dependency cases. Mr. Meltzer responded that all attorneys and guardians ad litem appointed to represent children in dependency cases shall adhere to this rule. However, the rule does not contain a

restriction limiting it only to dependency. In juvenile rules, rules apply to dependencies, guardianships and terminations of parental rights.

E. Language Access Planning *(taken out of order)*

Ms. Carol Mitchell, AOC specialist, informed members that Chief Justice Berch recently signed Administrative Order 2011-96, which requires courts to develop formal, written language access plans that describe court services for non-English speaking court users. Ms. Mitchell reviewed the A.O.'s basic requirements. She explained that one of the first steps is to identify the needs (i.e., foreign languages) and document the resources and services currently provided inside and outside of the courtrooms. Additionally, courts must develop a plan to remedy their deficiencies. She recommended that courts lacking the funding create a budget request and request additional funds for portions of the court's plan that are currently unachievable. Finally, Ms. Mitchell provided additional resources to help courts develop their respective plans, including templates and model plan instructions. Plans are to be submitted to the AOC by December 31, 2011.

Judge Soto stressed the importance for presiding judges to comply with the language access plans. Presiding judges have been tasked to ensure compliance across all courts in their county. Failure to provide a plan may have funding repercussions.

F. Draft Rule Petition – Victim Identification Procedures *(taken out of order)*

Ms. Carol Mitchell, AOC, staff to the Commission on Victims in the Courts (COVIC), reviewed the draft rule petition that represents COVIC's recommendation to amend several court rules in order to reduce potential harassment and re-victimization and improve the treatment for victims of sexual offenses and victims who were juveniles at the time of the offense. Ms. Mitchell offered some background information and provided specific examples where court records containing personal information and embarrassing references were accessed online by the public. Because these recent cases highlight victim privacy concerns, the commission recommends that the judicial system take action to strike the appropriate balance of public versus private information; that a statewide standard be implemented to ensure consistent protection of a victim's personal information; and that the amount of information be reduced in court documents, i.e., in parties' pleadings, briefs, motions and judicial rulings, so the information is not out there to be found on the internet.

COVIC is seeking approval from COSC to present the proposed rule petition to AJC for approval to file prior to the January 2012 deadline. Ms. Mitchell welcomed comments from COSC and went over some of COVIC's discussions. A sensitive data sheet was suggested to address requests for an alternative way to obtain protected information. Several COSC members had questions about how the proposed changes would impact them in actual practice: "How to refer to multiple victims?", "How to protect victims' names in restitution orders in open court?", "What are my obligation as clerk or judge?", and "How to protect sensitive information in documents such as victim impact statements?" COVIC had not considered document types like restitution orders or victim impact statements, and logistics would still need to be figured out in many situations. COVIC will be looking to other states that have similar statutes to see how they

addressed some of these issues. Several members agreed with the overall concept proposed and the need to balance public information and victims' privacy.

MOTION: To endorse the concept of the rule petition without commenting on the specific draft rule petition that is before the committee. Motion seconded. No further discussion. Approved unanimously. COSC-11-031

G. Rule Petition for Revisions to Rule 123, Rules of the Supreme Court *(taken out of order)*

Ms. Kay Radwanski, AOC policy analyst, and Ms. Jennifer Greene, AOC assistant counsel, presented revisions to Rule 123 concerning data dissemination on behalf of Ms. Melinda Hardman. Ms. Radwanski highlighted two substantive changes and produced a table that summarized the proposed modifications and explained why the mostly technical changes were necessary.

Ms. Radwanski addressed the first substantive issue regarding unserved Orders of Protection and whether they should be considered a closed record. This issue arose in connection with a media query; however, Rule 123 is mostly silent on this. Ms. Radwanski provided reasons to keep case records closed, foremost to avoid putting the plaintiff at risk if it becomes known to the defendant that the plaintiff obtained an order. The topic of courthouse access to unserved protective orders is currently being considered by the Committee on the Impact of Domestic Violence and the Courts (CIDVC) after Ms. Hardman's presentation last September. Ms. Radwanski, who also staffs CIDVC, informed members that CIDVC will recommend that the Arizona Rules of Protective Order Procedure be amended instead of Rule 123 and that case records remain closed until proof of service is filed.

Ms. Greene discussed the second substantive revision brought to light by a legislative change that would limit the public's right to access a judicial branch employee's disciplinary action records, once the action is completed, to the following documents: notice of charges, action taken, and the employee's response. Rule 123 allows for only a limited number of information in employees' records to be accessed; however, the AOC and the Attorney General's Office have interpreted Rule 123 differently. The proposed changes would therefore set the standard on what the rule allows in the way of public access to disciplinary and misconduct records of an employee and clarify how a custodian of records should respond to inquiries.

A member expressed concern about the impact on witnesses involved in a disciplinary case and whether their information would be released. Ms. Greene responded that the paperwork would need to be written in such a way to protect their identity.

MOTION: To recommend that AJC approve the filing of a rule petition for revisions to Rule 123, Rules of the Supreme Court, in January, 2012; support the proposed language regarding protective orders; and adopt the position that

unserved protective orders should not be accessed, as discussed. Motion seconded. No further discussion. Approved unanimously. COSC-11-032

H. Social Media and the Courts

Ms. Jennifer Liewer, AOC chief communications officer, provided an overview of various social networking sites. She illustrated the impact of social media throughout our society with new trends (47 percent of people get news from mobile devices), new topics and public policy concerns (media literacy), new risks and opportunities (R.O.I. refers to (R)isk (o)f (I)naction), and new meanings and definitions (is a blogger a journalist?). Similarly, social media affects the courts. Because of its relevance and reality in the courts, Ms. Liewer stressed the importance for the courts to work with and around social media as well as on new policies for the courts to manage it. She described the opportunities and challenges that social media presents in the judicial branch.

Ms. Liewer identified social media as a valuable and useful communications tool for the courts because it provides opportunities for the judicial branch to stay relevant; to educate and expand ongoing outreach with the community; to improve the public's media literacy; to monitor and broadcast messages about the courts and courts' business; and to communicate and reach reporters with immediacy. However, problems have arisen when social media is used in the courts by jurors. When jurors tweet about their experiences during trials or educate themselves about courtroom matters, there is the potential for mistrials, reversals of jury verdicts and jury misconduct. Ms. Liewer discussed appropriateness, implication and ethical concerns when judges or attorneys use social networking sites, or when there is "friending" between judicial positions. In order to manage these challenges, Ms. Liewer called for the judicial branch to develop appropriate standards, guidelines, definitions and best practices to promote proper interactions while being careful not to be too restrictive.

III. OTHER BUSINESS

A. Next Meeting Date

Friday, February 3, 2011
10:00 a.m. – 2:00 p.m.
Arizona State Courts Building
Conference Room 119 A/B

B. Good of the Order/Call to the Public

Adjourned at 12:40 p.m.